KUMPULAN GUTHRIE SDN. BHD.

v.

THE COLLECTOR OF LAND REVENUE, PORT DICKSON

HIGH COURT MALAYA, SEREMBAN
PEH SWEE CHIN J
[LAND REFERENCE NO. 11 OF 1982]
2 JUNE 1986

LAND LAW: *Valuation of lands - Disparity between government and private valuation - Factors taken into account by the Court.*

The lands in this case comprised of 3 contiguous lots which prior to these acquisition proceedings, formed part of an oil palm and rubber plantation owned by the applicant. The government valuer assessed the market value of the lands at RM14,400 per acre. The applicant however claimed that the lands had a market value of RM27,000 per acre. The matter was then referred to this Court.

Held:

[1] After an examination of the grounds of valuation of both the government and private valuers, the Court found it difficult to accept either valuation without qualification.

[2] The Court then compared the prices of the relevant lots cited in argument and held the market value of the lands to be RM17,840 per acre.

[Order accordingly.]

Legislation referred to:
Land Acquisition Act 1960, s. 8

For the applicant - Tee Kim Chan; M/s. Shearn Delamore & Co.
For the respondent - Abu Samah bin Nordin, State Legal Adviser, Negeri Sembilan

JUDGMENT

Peh Swee Chin J:

The acquired or scheduled lands in this case comprise of three contiguous lots with a combined area of 47.1 acres, which prior to these acquisition proceedings, formed part of the Port Dickson-Lukut Estate, an oil palm and rubber plantation owned by the applicant.

The scheduled lands are situated in the Mukim of Si Rusa, off Jalan Port Dickson/Pasir Panjang - a coastal road of that well-known holiday resort of Port Dickson. At the point where the scheduled lands are situated, the coastal road has vacant land and built-up land on both sides of it and the scheduled lands are on the side of the coastal road further away from the sea. Access to the scheduled lands is by an estate laterite road. Before reaching the scheduled lands from the coastal road (three miles from Port Dickson town), is first the valuable prime land partially built-up. Next comes further inside a housing estate i.e. Taman T.K.K. and, further inside, comes land owned by individuals, partially developed, and such land then adjoins the scheduled lands which are the inmost. Next to all these is a kampong called Kampong Bagan Pinang which is nearer to the Port Dickson town, and which is a Malay reserve area.

The government valuer, (RW1 before me), assessed the market value of the scheduled lands at RM14,400 per acre and maintained it in evidence before me and his valuation was accepted and adopted by the respondent while the applicant claimed before the respondent, a market value of RM27,000 per acre, hence this reference before me. The applicant has reiterated the same claim before me.

Both Counsel, I believe, have been supplied with typewritten notes of evidence, and it is all the more unnecessary to set out the evidence in detail except to point out the salient parts of such evidence.

Both valuers appear to have taken into consideration, by making adjustments in assessing the market value, the sizes, dates of sale prices, localities, material dates of valuation under the Land Acquisition Act, 1960 (the Act), development potential including the availability of power and water nearby, the necessity to apply to the Estate Board or otherwise, the delay involved in complying with law and bye-laws provided in respect of converting the scheduled lands into building land. Both have adopted the standard measure of market value by a consideration of prices of sales of similar lands in the similar locality and of similar quality and position. Yet an irreconcilable difference between their respective valuations emerges, for the private valuer has claimed RM27,000 per acre while the government valuer, RM14,400 per acre. This difference could have been the result of certain amount of exaggeration or playing-down as the case may be on the part of one or both of the valuers.

Speaking for myself I would examine their grounds of valuation before deciding to accept or not to accept the valuations.

The private valuer called by the applicant, has, in my opinion, relied to an unjustified extent, on transactions of lands not in similar locality. Of the 18 lots cited by him, 11 are situated in the Mukim of Port Dickson, District of Port Dickson, a different locality from the Mukim of Si Rusa where the scheduled lands are situated, but the remaining 7 of the 18 lots are similarly situated. Since the price per acre, before 30% deduction by way of adjustments for sizes and so on, was obtained from sum total of the prices of these 18 lots, per acre, the resultant valuation was bound to be on the higher side, because *inter alia*, the Mukim of Port Dickson contains the town of Port Dickson while the Mukim of Si Rusa is further away. I do not feel confident in accepting his valuation without qualification.

On the other hand, the government valuer has relied substantially on Bukit Palong Estate which is in the Mukim of Jimah, a place quite far from the sea as compared with scheduled lands, thus attracting the same objection that it is not in the same or similar locality, possessing similar advantages. The other main prop for the valuation is Lot 2002 which, at first sight, would appear to be the best guide even for valuation as it used to form part of the same Port Dickson-Lukut Estate. However, AW2 has given evidence about the price of RM6,000 per acre for Lot 2002 being in consideration of the government withdrawing acquisition proceedings in respect of 2,400 acres of the same Estate at that time. He even stated that the Menteri Besar had taken part in the negotiation. The fixing of the price in consideration of such withdrawal has never been contradicted by any evidence called by the respondent, apart from putting it to the witness that the owner had then consented to the price of RM6,000 per acre. On a balance of probabilities, I accept this evidence which is bound to underline the inherently unreliable nature of this price of RM6,000 per acre as the fair market value. I find it therefore equally difficult to accept the valuation from the government valuer without qualification.

The Court has therefore to compare all the prices of all the lots cited but in particular I find the following to deserve closer attention, viz:

	Lot Number	Date	Mukim	Area in acres	Price Per acre
(1)	471	13 July 1981	Si Rusa	2.05	RM26,829
(2)	171	11 July 1981	Si Rusa	2.412	RM10,365
(3)	177	17 February 1981	Si Rusa	2.462	RM10,154
(4)	621	20 May 1981	Si Rusa	3.125	RM42,200

The above 4 lots are, from the particulars given, very similar to the scheduled lands except that the price per acre of which remains to be assessed.

The average price per acre of the 4 lots would work out to be RM22,387 per acre, or to round off the figure, RM22,300. Because of the size of the scheduled lands, they are bound to be far less marketable than the 4 lots. There is bound to be more delay in building on the scheduled lands than on the 4 lots because of the application for fragmentation, *inter alia*, to the Estate Board, other things being equal. In these circumstances one is sorely tempted to adopt the usual 30% deduction from the average price of RM22,387 but there is one outstanding factor crying for special treatment, that is the evidence that one of the three contiguous lots in fact adjoins the Taman T.K.K., an established housing estate. The development potential thus becomes, in this case, imminent development. I will therefore only deduct 20% from the average price of RM22,300 in computing the market value which I thus arrive at RM17,840 per acre.

I regret I have to disagree with the opinion of both assessors who both have assessed it at RM14,400 per acre, the same as the amount awarded by the respondent, to quote, "as on the date of acquisition", and I take these quoted words to mean as on the date of declaration under s. 8 of the Act. They have given a further opinion that an increase of 10% per acre on RM14,400 be given from the material date of valuation i.e. 30 July 1981 - the date of publication of the acquisition declaration under s. 8 of the Act. I again disagree with them on this further opinion which is not authorised under the Act and is therefore erroneous.

I therefore decide as follows, i.e.-

(1) that the market value of the scheduled lands be RM17,840 per acre;

(2) that there be no order as to costs as the claim of the applicant exceeds by 20% or more of this Court's award;

(3) that the deposit as security for costs of reference be refunded to the applicant;

(4) that interest at 8% per annum be paid on the amount of difference between this Court's award and that of the respondent, from the date of possession till the date of satisfaction; and

(5) that each of the assessors be paid a fee of RM500, the same to be borne by both the applicant and the respondent in equal shares.

Also found at [1986] 2 CLJ 25